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NO. 80-1348

IN THE SUPREME COURT OF THE UNITED STATES
October Term 1980

STATE OF FLORIDA,
DEPARTMENT OF STATE,
Petitioner,

-vs-

TREASURE SALVORS, INC.,
ARMADA RESEARCH CORP.,
Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JANUARY 13, 1981
CERTIORARI GRANTED MAY 18, 1981

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

July 18, 1975	Complaint filed.
March 31, 1978	Plaintiffs' Motion for Order Commanding United States Marshal to Arrest and Take Custody of those Portions of the Defendant Vessel Now Being Held by L. Ross Morrell or James McBeth or under their Custody, Care or Control
April 6, 1978	Warrant for Arrest In Rem
April 12, 1978	Order of Court of Appeals Granting Petition for Emergency Stay
April 13, 1978	State of Florida's Motion to Quash Warrant for Arrest In Rem (and Supporting Memorandum)
April 17, 1978	Plaintiffs' Supplemental Complaint for Declaratory, Injunctive and Other Relief

April 17, 1978	Plaintiffs' Motion for Rule to Show Cause
April 17, 1978	Order Denying Motion to Quash; Staying Execution Tempo rarily; and Rule to Show Cause
April 17, 1978	Order Granting Motion for Rule to Show Cause
May 4, 1978	State's Reply to Rule to Show Cause
May 17, 1978	Order of Court of Appeals on Petitions for Emergency Relief, for Supplementary Relief and for Writ of Prohibition for the United States District Court for the Southern District of Florida
June 5, 1978	Order of Court of Appeals Denying Petition for Reconsideration and for Clarification

July 3, 1978	Order Directing Marshal to Execute Warrant for Arrest; Appointing Substitute Custodian and Setting Hearings on All Pending Matters
July 27, 1978	Hearing re Jurisdiction commences
July 28, 1978	Hearing re Jurisdiction concludes
August 21, 1978	Order and Memorandum Including Findings of Fact and Conclusions of Law
August 21, 1978	Final Judgement
August 25, 1978	State's Motion to Strike (and Supporting Memorandum)
September 14, 1978	State's Notice of Appeal
September 18, 1978	Order of Court of Appeals (staying judgement of District Court pending further Order, etc.)
May 10, 1979	Plaintiffs' Addendum to Description (of location of vessel)

December 11, 1979	Plaintiff's Amendment to Description (of location of vessel)
July 24, 1980	Panel Opinion of Court of Appeals
August 4, 1980	State's Suggestion for Rehearing en banc
October 16, 1980	Order of Court of Appeals Denying Petition for Rehearing en banc
October 24, 1980	Judgement and Issuance of Mandate by Court of Appeals
January 13, 1981	Petition for Writ of Certiorari filed
May 18, 1981	Petition for Writ of Certiorari granted

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
KEY WEST DIVISION

CASE NO. 75-1416

TREASURE SALVORS, INC., a corporation and ARMADA RESEARCH CORP., a corporation,

Plaintiffs,

COMPLAINT

vs.

THE UNIDENTIFIED WRECKED AND ABANDONED SAILING VESSEL, HER TACKLE, ARMAMENT, APPAREL AND CARGO LOCATED WITHIN 2500 YARDS OF A POINT AT COORDINATES 24° 31.5' NORTH LATITUDE AND 82° 20' WEST LONGITUDE, SAID SAILING VESSEL IS BELIEVED TO BE THE "NUESTRA SENORA DE ATOCHA",

Defendant.

JURISDICTION

This is a case of admiralty and maritime jurisdiction, as hereinafter more fully appears. This is an admiralty and maritime claim within the meaning of Rule 9(H).

1. Both Plaintiffs are corporations

organized and having offices and places of business in this division of the district of the State of Florida. Plaintiffs bring this action individually and as owners of the salvage vessels North-Wind, South-Wind and Virgalona and on behalf of all others beneficially interested.

2. The unidentified wrecked and abandoned sailing vessel located within 2500 yards of a point at coordinates 24° 31.5' north latitude and 82° 20' west longitude is thought to be the NUESTRA SENORA DE ATOCHA (hereinafter referred to as the ATOCHA). The vessel sank in or about the year of 1622 while in route from the Spanish Indes to Spain. The vessel has been wrecked and abandoned since that time. Her present position as set out above is outside the territorial

waters of the State of Florida and of the United States. The ATOCHA will be, however, within the jurisdiction of this honorable Court within the pendency of this action. In fact, some portions of the vessel have now been brought by the Plaintiffs within the jurisdiction of this honorable court.

3. Plaintiffs are the operators, owners, or charterers of salvage vessels presently in possession and exclusive control of the ATOCHA.

4. The remains of the ATOCHA, her armament, apparel, tackle and cargo are all abandoned treasure found, discovered, and confirmed by, and in total and exclusive joint possession of the Plaintiffs.

5. The Plaintiffs have engaged in long, extensive research since the year 1970 and have engaged in expensive and

dangerous search, exploration and salvage in order to find and possess the ATOCHA and other treasure mentioned above.

6. The services, skills and expenditures of time and money on the part of the Plaintiffs are of the highest order of merit.

7. By virtue of these acts title to the ATOCHA and other treasure has become vested in the Plaintiffs jointly in equal shares.

8. But if mistaken in this the services constitute salvage services of the highest order of merit justifying a full and liberal salvage award.

WHEREFORE, Plaintiffs demand:

1. That proper process issue in accordance with supplemental admiralty rules and that since it is impracticable for the Marshall to take full posession

that additional ancillary process issue under Rule E(4)(B) and C(5) as the court may order and that in the event bond is not posted that Public Notice to claimants be given in such form as the court may direct.

2. That Plaintiffs be put into possession of the ATOCHA and other property and that all other persons, firms, and corporations or government agencies be enjoined from interferring with Plaintiffs title, possession, and property.

3. That Plaintiffs title be confirmed against all claimants and all the world.

4. Alternatively, that Plaintiffs be awarded a full and liberal salvage award of the highest order.

5. And Plaintiffs pray for general relief and as in duty bound will ever pray, ets.

Respectfully submitted,

s/ David Paul Horan
DAVID PAUL HORAN, ESQ.
517 Whitehead Street
Key West, Florida 33040
and J. M. MORSE III, of
COUNSEL
Attorneys for the Plaintiffs

(Verification omitted in printing)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

(Title omitted in printing)

MOTION FOR ORDER COMMANDING UNITED STATES MARSHAL TO ARREST AND TAKE CUSTODY OF THOSE PORTIONS OF THE DEFENDANT VESSEL NOW BEING HELD BY L. ROSS MORRELL OR JAMES McBETH OR UNDER THEIR CUSTODY, CARE OR CONTROL

COME NOW the Plaintiffs, by and through their undersigned attorney, and pursuant to the Final Judgment rendered by this Court February 19, 1976 and the Appellate Opinion rendered by the United States Court of Appeals for the Fifth Circuit No. 76-2151, March 13, 1978, move this Court for an Order commanding the United States Marshal to arrest and take custody of those portions of the Plaintiffs' vessel now being held by L. Ross Morrell or James McBeth or being held under their custody, care or control. This Motion is made by the Substitute

Custodian, Treasure Salvors, Inc. and Armada Research Corporation. The grounds cited for this Motion are as follows:

1. On October 28, 1975, this Court appointed the Plaintiffs, Treasure Salvors, Inc. and Armada Research Corporation, the substitute custodian of the vessel which was the subject of this action. The Court in its Order turned over:

> ". . . possession of the Defendant vessel, her tackle, apparel, armament and cargo and all other necessaries thereunto appertaining and belong to said vessel to said substitute custodian. . ."

2. The substitute custodian/Plaintiffs were awarded a Summary Judgment by this Court on February 2, 1976, and on February 19, 1976, this Court issued an Order of Final Judgment confirming the substitute custodian/Plaintiffs as having

sole title and right to possession of the Defendant vessel.

3. The Defendant/Intervenor, United States of America, on the 24th of February, 1976, moved this Court for an Order, pending appeal, continuing the substitute custodianship of the Plaintiffs. On February 27, 1976, this Court granted the Motion.

4. Fifty-seven (57) days after the Final Judgment, the United States of America, Defendant/Intervenor herein, appealed to the United States Fifth Circuit Court of Appeals.

5. On November 15, 1977 oral arguments were heard in the appeal filed by the United States, Defendant/Intervenor/Appellant, and on March 13, 1978 the Fifth Circuit Court of Appeals rendered its decision. The Fifth Circuit in its

decision pointed out that the decision in United States v. Florida, 420 U.S. 531, 95 S.Ct. 1162, 43 L.Ed.2d 375 [1975], refuted Florida's claim to the wreck site. The Opinion conclusively shows that it is undisputed the wreck lies on the continental shelf outside the territorial waters of the United States.

6. The Plaintiffs' claims were adequately noticed and all interested parties, including the State of Florida, were constructively served by Notice pursuant to the Admiralty Rules regarding the above-captioned in rem action.

7. During the period of the appeal the Defendant, United States, allowed by Stipulation the release of certain objects and artifacts from the substitute custodianship of the Plaintiffs/Appellees. The release of the items and

objects provided a method of raising funds which were needed to continue the corporate existence of the Plaintiffs.

8. The present status of the substitute custodianship presently in force within this Court's jurisdiction is that numerous items and objects which were recovered from the wreck of the NUESTRA SENORA DE ATOCHA" by the Plaintiffs and which should be in substitute custodianship and subject to distribution pursuant to this Court's Final Judgment and the Appellate Court's Opinion, are presently being held by Mr. L. Ross Morrell, the Director of the Division of Archives, History and Records Management, Bureau of Historic Sites and Properties, Florida Department of State, or in the alternative Mr. James McBeth, the Bureau Chief of the Historical Museum, Division of

Archives, History and Records Management, Bureau of Historic Sites and Properites, Florida Department of State. These items are not in substitute custodianship, nor have they been arrested by the United States Marshal, although the items and objects were recovered from the ATOCHA wreck.

9. A list of the items and objects in Tallahassee, Florida is attached hereto and made a part hereof and the said L. Ross Morrell and/or James McBeth continue to retain possession of the items and objects under a contract dated December 3, 1974. A copy of said contract is attached hereto and made a part hereof.

10. The consideration between the parties to the attached contract is set out in the document as follows:

"The Division hereby grants unto the salvager a contract to conduct underwater salvage from and upon certain submerged sovereignty lands of and belonging to the State of Florida for and in consideration of the amount of Twelve Hundred and No/100 - ($1,200.00) Dollars. . ." [emphasis addded]

11. At the time of the contract dated December 3, 1974, the Supreme Court of the United States had not ruled on the issue of Florida's boundaries and the State of Florida was claiming complete ownership and sovereignty over the submerged lands encompassing the wreck site of the ATOCHA.

12. Since the Supreme Court ruled and despite numerous demands being made, and despite this Court's adjudication of title, said L. Ross Morrell and/or James McBeth still refuse to give up possession to this Court's substitute custodian of

the objects and items they are presently holding.

13. Inasmuch as the State of Florida and said L. Ross Morrell and James McBeth were privy to this litigation, it is clear that this Court confirmed to the Plaintiffs:

> ". . .title to and right to immediate and sole possession of the vessel identified in this matter as "NUESTRA SENORA DE ATOCHA", together with all her tackle, armament, apparel, and cargo, wherever the same may be found." [emphasis supplied]

14. This Court retained jurisdiction of this matter for the purposes of enforcement of its Order.

WHEREFORE, The substitute custodian/Plaintiffs/Appellees, move this Court for the issuance of a warrant for the arrest in rem made out to the Marshall of the United States for the Southern District

of Florida. It is respectfuly requested that this Court direct said Marshal to take into his possession and custody those portions of said vessel now in the possession, custody, care or control of said L. Ross Morrell and/or James McBeth, and then upon the return to the Southern District, to surrender said possession to the Court's duly appointed substitute custodian.

Respectfully submitted,

s/ David Paul Horan
DAVID PAUL HORAN
513 Whitehead Street
Key West, Florida 33040

Counsel for the substitute custodian/Plaintiffs/Appellees

(Certificate of Service omitted in printing)

[EXHIBIT]

SALVAGE CONTRACT
between
DIVISION OF ARCHIVES, HISTORY AND
RECORDS MANAGEMENT
DEPARTMENT OF STATE
STATE OF FLORIDA
and
ARMADA RESEARCH COMPANY, INCORPORATED

No. S-8-C

THIS CONTRACT made this 3rd day of December, 1974, between the DIVISION OF ARCHIVES, HISTORY AND RECORDS MANAGEMENT, DEPARTMENT OF STATE, STATE OF FLORIDA, hereinafter called the DIVISION, and ARMADA RESEARCH COMPANY, INCORPORATED, 100 Margaret Street, Key West, Florida 33040 hereinafter called the SALVAGER:

WITNESSETH:

I.

The Division hereby grants unto the Salvager a contract to conduct underwater salvage from and upon certain submerged sovereignty lands of and belonging to the

State of Florida for and in consideration of the amount of Twelve Hundred Dollars ($1,200.00) and the Salvager's faithful performance of the covenants and conditions as set forth in Parts II and III hereof, which contract is made under authority of Chapter 267, Florida Statutes, and Chapter 1A-31, Florida Administrative Code, for that property more particularly described as follows:

> Commence below the center of the aid to Navigation located at 24° (degrees) 27.5' (minutes) North latitude, and 82° (degrees) 11.1' (minutes) West longitude, identified on United States Coast and Geodetic Survey Chart #1252, 9th Edition, dated June 27, 1970, as Cosgrove Shoal Light (Fl. 6 Sec. 49 Ft. 10M.) thence run on a bearing of 296.5° (degrees) (true) 19,500 (nineteen thousand five hundred) yards to the Point of Beginning. The Point of Beginning being the center of a circular area with a radius of 1250 (one thousand two hundred fifty) yards centered approximately at 24° (degrees)

31.85' (minutes) North latitude and 82° (degrees) 20.55' (minutes) West longitude. Said area intended to encompass shipwreck site 8 (Florida) Mo (Monroe) 141.

The above described area lying and being in Monroe County, Florida.

which area, represented to the best of the Salvager's knowledge to contain and encompass a shipwreck site, is to be worked for the purpose of salvaging abandoned vessels or the remains thereof including, but not limited to, relics, treasure trove and other materials related thereto and located thereupon and therein, which abandoned material is the property of the State of Florida.

II.

The Salvager agrees and covenants as follows:

2. To utilize only one vessel, approved in writing by the Division's

director, in the exploration and/or salvage operations conducted hereunder, from which any recovery operations contemplated under the terms of this contract will be carried out. This provision does not necessarily preclude the use of additional minor support vessels provided written request for permission to use support vessels is made to the director and written approval is given therefor and the Salvager agrees that no salvage and recovery diving will be made therefrom.

2. To make a quarterly written report, or more often if either party desires, of salvage operations to the Division, including an itemized list of materials recovered under this Agreement; and, to permit the Division or its designated agent to audit the books, accounts,

and logs of the Salvager in connection with operations permitted under this contract.

3. To retain possession and to safely maintain storage of all materials, whether of a precious or base nature, recovered hereunder unless and until explicitly relieved in writing of this obligation by either the Division's director or court order; provided, further, to keep the Division apprised at all times of the location of said material, and to maintain storage in a place designated in writing by Division director and in the manner prescribed by the Division's underwater archaeologist, and to grant the Division the right to the immediate possession of any and all such materials, including the right of inspection during normal business hours.

4. To make no disposition, by any method, of any material recovered hereunder until:

a. after the division of material recovered hereunder has been completed as provided in Article III, Number 2 hereinafter, and

b. after legal title to said material has been vested in the Salvager as a result of such division hereunder.

5. To hold harmless the Division and its agents for damage, loss or destruction of and to material recovered hereunder resulting from scientific examination, including cleaning thereof; nor shall such material adversely affect either party's part of the payment set forth in Article III, 2.

6. To extend all reasonable cooperation to any personnel of the

Division in the Salvager's performance hereunder;

7. To specify and acknowledge that salvage is being conducted under a contract with the Division in any and all information, whether verbal or written, given by the Salvager and his agents to the news media regarding activities hereunder; and, further to accurately represent and state his contractual relationship in any articles authorized by Salvager and his agents in whatever form, including but not limited to scientific reports, magazine stories, television and films and to submit for prior review by the Division articles authored by the Salvager or his agent; further, to refrain from attributing statements to personnel of the Division and to, whenever possible, have a member

of the Division present when being interviewed as to the historical import of the site and any materials recovered therefrom.

8. To make no assignments of any rights under this Agreement; provided, however, that written employment agreements may be approved by the Division director under Rule 1A-31.03, Florida Administrative Code; and, further, the Salvager may, subject to prior written approval by the Division, enter into agreements to lease equipment for salvage under this Agreement.

9. To comply with all laws and regulations of the United States and the State of Florida and its agencies relating to conservation of marine life, navigation, riparian rights, and preservation and protection of historic and archaeo-

logical sites as contemplated by the provisions of Chapter 267, Florida Statutes.

10. To disturb no beds of economically exploitable metals or minerals lying and being in their natural state.

11. To use no explosives in any of the operations under this Agreement.

12. To furnish to the Division a magnetometer survey chart of the Agreement area prior to the commencement of salvage operations hereunder.

13. To recover artifacts utilizing minimal horizontal controls of six-meter squares throughout the site's scatter area and minimal one meter squares within the site's concentration area(s); all squares must be an integral portion of the site's grid system; concentration areas are to be as defined by the

Division's underwater archaeologist.

14. To utilize upon the request of the Division's underwater archaeologist vertically controlled excavation and record keeping techniques specified by him.

15. To place no portion of the site in jeopardy through exposure to destructive agents, either natural or artificial upon cessation of salvage activities covered by this Agreement and to assist a visual inspection by the Division's underwater archaeologist at the termination of salvage activities to assure that this covenant is fulfilled.

16. To maintain a Record (Log) of Daily Activities, furnished by the Division, according to instructions therein, including the Salvager's submission of weekly reports therefrom to the Division;

the log is the property of the Division and is subject to inspection during the term of this Agreement and to disposition at the Division's discretion at the expiration hereof; provided, that upon the expiration of this Agreement, the weekly reports (blue copies) as submitted by the Salvager during the term hereof shall become the property of the Salvager and, upon request, the Division shall return said reports to the Salvager;

17. To permit the Division and its agents to inspect any of the Salvager's business records kept in regard to salvage operations conducted under this Agreement; and, to permit agents of the Division to board salvage and support vessels operated by the Salvager and to enter the waters at salvage sites in order to observe and audit salvage

operations conducted hereunder.

18. To furnish the Department a good and sufficient surety bond payable to the division in the amount of Fifteen Thousand Dollars ($15,000.00) to guarantee faithful and honest conduct by the Salvager of the covenants of this contract.

19. To permit, two (2) qualified field agents of the Division, which shall be assigned to oversee the salvage operations, to be on board the approved work vessel each time it leaves port to work the contract site. If only one State representative is available the salvager may furnish one additional person. The salvager may provide this additional person upon the condition that this person shall be assigned specifically to and work under the supervision of the field

agent representative, and that this person meets the State's current employment qualifications for a field agent.

20. To commission, at salvager's expense, a bonded oceanographic surveyor to locate with semi-permanent markers or buoys the center of the salvage site described above, before any work is performed in contract area.

III.

The following conditions are mutually agreed upon by the parties hereto:

1. This agreement shall be for a term of one (1) year from the date first above written, subject to written renewal by the parties hereto upon such terms and conditions as are mutually agreeable.

2. In payment for the Salvager's

satisfactory performance and compliance with this Agreement, the Division will award to the Salvager seventy-five percent (75%) of the total appraised value of all material recovered hereunder, which payment shall be made at the time division of such material is made by the parties hereto. Said payment may be made in either recovered material or fair market value, or in a combination of both, at the option of the Division's director. The time and location of the division shall be as mutually agreed upon by the parties hereto, which division shall be made as expeditiously as possible but not so quickly as to jeopardize scientific evaluation of the material deemed necessary by the Division. In the event that the parties hereto are unable to agree upon the value of material

recovered hereunder, the parties hereto shall each name a professional appraiser, and they a third, which three appraisers shall determine the value and proper division of the salvaged or recovered material to the Department and Salvager respectively. Payment for the appraisers' services shall be made jointly and equally by the parties hereto.

3. The State of Florida, acting by and through its departments and agencies, reserves the right to enter into agreements or leases covering the contract area described herein for whatever purpose, including the sale of oil, gas and hard minerals; oysters and oyster shells; sand, gravel or similar products, and to remove the same, provided such purposes shall not interfere with the salvage

operations of the Salvager herein; provided, however, any prior agreement made by the Trustees of the Internal Improvement Trust Fund shall prevail over this Agreement if any conflicts arise as between it and this Agreement.

4. Should the Division's salvage and exploration field agent, the Division's underwater archaeologist or other archaeologist assigned by the Division to the salvage site determine that artifacts or archaeological features discovered or uncovered during recovery operations under this contract are of sufficient scientific or historical importance to the public to warrant special handling or protection, the Division's representative may order temporary termination of the excavation or recovery operation over an area

delineated by him. Termination of operations will remain in effect until such time as the Division's underwater archaeologist determines whether to institute special operational procedures to properly and scientifically record and recover the artifacts or features or until he releases the artifacts and features to normal recovery procedures. This provision is solely intended to protect scientific and historic information relating to the wreck site and is not intended to preclude excavation or recovery operations by the salvager elsewhere on the site during the time the stop order is in effect so long as operations in other areas of the site in no way endanger the artifacts or features being protected.

5. The Division, acting through its

Underwater Archaeological Research Section, or its designee, reserves the right to enter upon the contract area herein described to survey for prehistoric and historic archaeological sites, including shipwrecks and objects of interest to it, in the furtherance of its responsibilities as set forth and contemplated by Chapter 267, Florida Statutes, when in its judgement such sites and objects are threatened with either destruction or disturbance by any type of activity, including, but not limited to, dredging and drilling operations; cable and pipeline installations or removals, and construction of seawalls, revetments, groins or submerged structures.

6. This Agreement may be immediately cancelled at the option of the Division should the Salvager fail to comply

with any of the provisions contained herein or any of the rules and regulations of the Division, or if Salvager terminates for whatever reason this contract without fulfilling the conditions listed above, the Salvager's performance bond shall be forfeited to the Division in the case of such non-compliance. In the case of termination of work by the Salvager, it is understood and agreed between the parties hereto there will be division between the Salvager and the Division of Archives, History and Records Management of any recovered artifactual material.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals in execution of this Agreement the day and year first above written.

WITNESSES:

s/ Barbara Stout

s/ Diane Corbett

s/ Margory Hargroves

s/ Bleth McHaley

s/ Margory Hargroves

s/ Bleth McHaley

s/ W. Robert Williams (Seal)
W. Robert Williams, Director
Division of Archives,
History and Records
Management
Department of State
State of Florida

s/ Melvin A. Fisher (Seal)
Melvin A. Fisher, President
Armada Research, Inc.

s/ Delores Fisher (Seal)
Delores Fisher, Secretary
Armada Research, Inc.

(Note: Remaining exhibit omitted in printing, but is contained in the Record at R330-340.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

(Title omitted in printing)

WARRANT FOR ARREST IN REM

THE PRESIDENT OF THE UNITED STATES OF AMERICA

TO: THE MARSHAL OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA

GREETING:

WHEREAS, on the 18th day of July, 1975, Treasure Salvors, Inc., a corporation and Armada Research Corporation, a corporation, filed a Complaint under Rule 9(h) against the Unidentified Wrecked and Abandoned Sailing Vessel, her tackle, armament, apparel and cargo located with 2500 yards of a at coordinates 24° 31.5' North Latitude and 82° 20' West Longitude, said sailing vessel believed to be the NUESTRA SENORA DE ATOCHA" for the reasons in said Complaint, and

WHEREAS, in November of 1975 Notice of said claim was published in a newspaper of general circulation within the District, and

WHEREAS, the State of Florida nor any of its agencies, agents, or employees, did appear in this cause to defend or prosecute any claim that they might have to any portions of said vessel that were in their possession, custody, care or control.

NOW, THEREFORE, you are hereby commanded to take into your possession the portions of said vessel which have been in the possession or are in the possession of L. Ross Morrell and/or James McBeth, or under their custody, care or control and to bring said portions of said vessel within the jurisdiction of this Honorable Court and transfer

possession of same to the substitute custodian appointed in this action.

And how you shall have executed this Writ, make known to this Court with your Certificate of Execution thereof written.

WITNESS THE HONORABLE WILLIAM O. MEHRTENS, Senior Judge of said Clerk at Miami, Florida in said District, this 6th day of April, 1978.

s/ W. Mehrtens

JOSPEH I. BOGART, CLERK, United States District Court, Southern District of Florida

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

(Title omitted in printing)

STATE OF FLORIDA'S MOTION TO QUASH WARRANT FOR ARREST IN REM

COMES NOW, the State of Florida, by and through the undersigned counsel, and moves this Court to set aside and quash the warrant for arrest in rem issued against the State of Florida at the request of Plaintiffs herein, upon the following grounds:

1. The State of Florida was not a party in the case of Treasure Salvors, Inc. v. Unidentified Wrecked and Abandoned Sailing Vessel in the Fifth Circuit Court of Appeals. Therefore, Florida did not waive the requirement that the res be present within the territorial jurisdiction of the Court and did not consent to the Court's jurisdiction to determine its

interest in the portion of the vessel in question.

2. Process cannot be properly issued pursuant to 28 U.S.C. Section 1692 when those to be affected were not parties to the underlying proceedings.

3. A contract was entered into between Armada Research Corporation and the State of Florida on December 3, 1974 and was for a good and valid consideration. The contract alone determined the rights and obligations of the contracting parties and was in no way affected by United States v. Florida. This contract was fully executed and performed prior to the United States v. Florida.

4. In affirming this Court's ruling in this proceeding, the Fifth Circuit "did not approve that portion of its order which may be construed as a holding

that plaintiff has exclusive title to and the right to immediate and full possession of the vessel and cargo as to other claimants ... who are not parties previous to this litigation."

5. From a legal and curatorial standpoint, it is imperative that Bureau Staffers photograph each of the 1,700 plus artifacts from the site and in the 8 M O 141 prior to relinquishing our possession of them. Due to the normal annual requirements of the on-going contract program the conservation laboratory personnel have been attending to and conserving and curating current contract materials. The clean and processed materials have yet to be photographed. It would be impossible to defend the agency against any subsequent contentions of miscounted, lost, misplaced, or "des-

troyed in cleaning", artifacts without a complete photographic inventory of that which will be relinquished. Furthermore, in the absence of such a photographic record, documented by bureau staffers, the continued authentic province of the collection cannot be attested to by Bureau Staffers.

6. Said warrant is too indefinite and uncertain with reference to artifacts in question, the same not being described other than by the use of the word "portion" and it not being shown what artifacts are contemplated, by the warrant.

WHEREFORE, THE STATE OF FLORIDA requests that the warrant for arrest In Rem be quashed and held void by this Court and that the State of Florida recover its costs and be given such other and further relief to which it may be

justly entitled by virtue of the premises.

Respectfully submitted,

ROBERT L. SHEVIN
Attorney General

s/ Joel D. Rosenblatt
JOEL D. ROSENBLATT
Assistant Attorney General
8585 Sunset Drive
Miami, Florida 33143

(Certificate of Service omitted in printing)

MEMORANDUM OF LAW IN SUPPORT OF STATE'S MOTION TO QUASH WARRANT FOR ARREST IN REM

The State of Florida's Motion to Quash Warrant for Arrest in Rem is based on several grounds:

1. The District Court clearly did not have jurisdiction over the State of Florida in order to enter an order asking the State's interest in the artifacts or vesel in question. At no time did

Florida enter an appearance in the Treasure Salvors, Inc. at the District Court level or in the Fifth Circuit Court of Appeal. The Fifth Circuit in its opinion in Treasure Salvors, Inc. v. The Unidentified Wreck and Abandoned Sailing Vessel, Case No. 76-2151 (USCA 5th Cir., 1978), recognize that jurisdiction of the res and consent to jurisdiction as being a basic prerequisite to the court having valid jurisdiction over the parties. Indeed, in response to the United States' agruments that the court lacked jurisdiction, the Court of Appeal opened as follows:

> "The United States intervened in plaintiffs in rem as a party defendant and filed a counter-claim asserting a property right. In the res. the government, by intervening in this case and by stipulating to the court's admiraly jurisdiction waive the usual

> requirement that the res. be present within the territorial jurisdiction of a court and consented to the court's jurisdiction to determine its interest in the extra territorial portion of the vessel."

Contrary, the Treasure Salvors, Inc. contract entered into by the State of Florida and Armada Research Corporation was fully executed and performed prior to the case relied upon by the plaintiff, United States v. Florida. It is recognized by the Court of Appeal that a mandate is to be interpreted reasonably and not in a manner to do injustice. If the State of Florida's motion is not granted, irreparable harm will be suffered by the State. Once custody of the artifacts in question is relinquished by the State, without the same having been photographed by bureau staffers, it would be impos-

sible to defend the agency against subsequent contention of miscount, loss, misplaced, or "destroyed in cleaning" artifacts without a complete photographic inventory. Furthermore the chain of custody would be broken and the value of these artifacts would be severely diminished.

For these reasons the State of Florida respectfully request that this Court enter an order granting its Motion to Quash the Warrant for Arrest in Rem.

Respectfully submitted,

ROBERT L. SHEVIN
Attorney General

s/ Joel D. Rosenblatt
JOEL D. ROSENBLATT
Assistant Attorney General
8585 Sunset Drive
Miami, Florida 33143

(Certificate of Service omitted in printing)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

(Title omitted in printing)

ORDER DENYING MOTION TO QUASH; STAYING EXECUTION TEMPORARILY; AND RULE TO SHOW CAUSE

The plaintiffs' complaint is an *in rem* and quasi *in rem* action (on in personam principles) against an unidentified wrecked and abandoned sailing vessel thought to be the "Nuestra Senora De Atocha", seeking possible possession and confirmation of title against all claimants and all the world, and, alternatively, to establish a salvage award of the highest order, filed July 18, 1975, under Rule 9(h). The wreck is located on the Continental Shelf outside the territorial waters of the United States and, necessarily, the State of Florida. Prior to the institution of this action, the

plaintiffs had brought into the Southern District of Florida numerous objects of antiquity recovered from the wreck, a substantial portion of which remains in the Southern District of Florida. A warrant in rem upon the unidentified and abandoned wreck was duly issued and served upon it by the United States Marshal. The United States was permitted to intervene as a party. Notice of the arrest of the wrecked and abandoned vessel, her cargo, etc. was published in the Key West Citizen on November 3, 1975, requiring any and all persons asserting a claim to the subject matter of this suit to appear and assert their claim.

This, of course, constituted notice to all the world, including the State of Florida. The State of Florida, although having valid constructive notice, and

indeed actual notice, of the suit and the facts involved therein and, therefore, having the opportunity to intervene in this action and assert any claim to ownership of the vessel, failed or refused to do so. On February 19, 1976, this Court entered its final judgment in favor of the plaintiffs and against all claimants. That judgment was appealed from. Thereafter, in March, 1978, the United States Circuit Court of Appeals for the Fifth Circuit affirmed this Court's judgment in all respects except that portion giving the plaintiffs exclusive title as to other claimants, if any there be, who were not parties or privies to this litigation. A substantial portion of the artifacts having been transferred by the State of Florida under an alleged contract to Tallahassee, Florida,

the Court issued a warrant for arrest in rem directing the United States Marshal to obtain possession of that part of the res which had been transferred from the Southern District of Florida to Tallahassee, and to deliver them to the Substitute Custodians of the res appointed by the Court pending the final disposition of this cause.

The State of Florida in what appears to have been an obvious case of both "court shopping" and "judge shopping" filed in this court a document titled "State of Florida's Motion to Quash Warrant for Arrest in Rem", praying that the warrant be quashed, held void by this Court, and that the State of Florida recover its costs and any further relief it might be entitled to, and almost simultaneously filed a document in the United

States Circuit Court of Appeals for the Fifth Circuit titled a "Petition for Emergency stay" of the warrant of arrest.

The Court has today received a copy of an order from the Fifth Circuit granting the petition for emergency stay pending further consideration of the subject matter by that court.

The matter is now before this Court upon the State of Florida's motion.

The accepted general rule in admiralty proceedings is that any person who has had an opportunity to intervene in an admiralty action and assert any claim to ownership of the res is bound by the court's decree. Admiralty Rules, Rule 19, 28 U.S.C.A.; Cummins Diesel Michigan, Inc. v. The Falcon (C.A. Ill.), 305 F.2d 721. Further, it is well established that if any claimant in an admi-

ralty action fails to appear and assert his claim, the court may dispose of the case without further notice to him or, in the alternative, may allow him to answer. Koufopantelis v. Cia. De. Nab. San George S.A. (C.A. N.Y.). 291 F.2d 709; cert. denied, 368 U.S. 895.

After careful consideration of the various grounds relied upon by the State, this Court is persuaded that the State's motion to quash should be at this time denied, but that execution of the arrest warrant (in accordance with the Fifth Circuit's order) be stayed pending further order of this Court.

The warrant for arrest in rem did not constitute an attempt to determine any interest or title in any portions of the subject vessel, but merely represented a means of transferring possession of

the property to the custodians appointed by the Court. The warrant recited that the State of Florida did not appear in this cause to defend or prosecute any claim that it might have. It has now been brought to the attention of the Court that the State does claim an interest in the subject property.

The State asserts in paragraph 1 of its motion that it was not a named party and, therefore, did not waive the requirement that the res be present within the territorial jurisdiction of the Court, or consent to the Court's in personam jurisdiction. Insofar as the question of jurisdiction over the res is concerned, that has been affirmatively settled against it in the Fifth Circuit's opinion, and this Court does have subject

matter jurisdiction. In personam jurisdiction will be discussed hereinafter.

In paragraph 3 of its motion, the State asserts that it has possession of and title to 25% of the res by virtue of a contract between it and Armada Research Corporation, thereby, at this late date, asserting a claim to part of the res.

This assertion goes directly to the merits of the plaintiffs' claim in the instant controversy. Where a party appears by motion and objects to the jurisdiction of the court and also submits a matter involving the merits of the action, there is a general appearance which confers upon the court in personam jurisdiction over the moving party. Thames & M.M. Insurance Co. v. United States, 237 U.S. 19 (1915); Big Vein Coal Co. v. Read, 229 U.S. 31 (1913); McKelvey v.

McKelvey, 323 So.2d 651 (Fla. App. 1976). Accordingly, the State of Florida "may equitably be treated as if [it] had been brought into court by personal process." The Fairisle, 76 F.Supp. 27 (D. Md. 1947); Mosher v. Tate, 182 F.2d 475 (9th Cir. 1950); and see Sholtz et al. v. United States ex rel. Ben Hur Life Association, 82 F.2d 780 (5th Cir. 1936). By virtue of its voluntary, general appearance in this cause, the State of Florida has waived the general requirement that the res be within the territorial jurisdiction of the court and, further, has consented to the court's jurisdiction over its interest in any portions of the vessel. Treasure Salvors, Inc. v. Unidentified Wrecked and Abandoned Sailing Vessel, 5th Cir. No. 76-2151, March 13, 1978).

Even though the State had knowledge of the proceedings, had an opportunity to timely intervene and assert its claim to ownership, the Court is disposed even now to permit the State to assert its claim so that the same may be disposed of without multiplicity of actions.

Admiralty Rule C(5) provides for an order to show cause why property subject to an action should not be brought into the custody of the Court. Property covered includes the vessel itself, its engine, tackle, apparel, furniture, and personal effects. The Showboat, 47 F.2d 286 (D. Mass. 1930); The Katherine, 15 F.2d 387 (E.D. La. 1026); The Augusta, 15 F.2d 727 (E.D. La. 1920); The George Prescott, 10 F. Cas. 223 (E.D. N.Y. 1865) (No. 5,339). It further includes property removed prior to the vessel's ar-

rest. See, The Joseph Warner, 32 F.Supp. 532 (D. Mass. 1939). Ancillary process, therefore, extends to the property now held by the State. The Joseph Warner, supra; The George Prescott, supra. Therefore, pursuant to Admiralty Rule C(5), it is

ORDERED and ADJUDGED that the State of Florida is hereby directed within fifteen (15) days to show cause why the property held by the State of Florida pursuant to the alleged agreement with plaintiffs should not be delivered into the custody of the custodians appointed by the Court. Further, it is

ORDERED and ADJUDGED that the State of Florida's motion to quash and hold void the warrant for arrest in rem is hereby denied but that execution of the

warrant of arrest is hereby stayed pending further order of this Court.

DONE and ORDERED at Miami, Florida, this 14th Day of April, 1978.

s/ W. Mehrtens
Senior United States
District Court Judge

("CC" to counsel omitted in printing)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

(Title omitted in printing)

ORDER GRANTING MOTION FOR
RULE TO SHOW CAUSE

The plaintiffs having filed a motion for rule to show cause, and the Court ex mero motu having issued a rule to show cause on April 14, 1978 to the State of Florida, and being advised in the premises, it is

ORDERED and ADJUDGED that the plaintiffs' motion for a rule to show cause be and the same is hereby GRANTED. It is further

ORDERED and ADJUDGED that the State of Florida is hereby directed within fifteen (15) days to show cause before this Court why the property held by the State of Florida should not be delivered to the Custodians appointed by the Court.

Those portions of the Court's rule to show cause, dated April 14, 1978, filed herein are hereby incorporated by reference thereto.

DONE and ORDERED at Miami, Florida, this 17th day of April, 1978.

s/ W. Mehrtens
Senior United States District Judge

("CC" to counsel omitted in printing)

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

(Title omitted in printing)

On Petitions for Emergency Relief, for Supplementary Relief and for Writ of Prohibition for the United States District Court for the Southern District of Florida

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Before THORNBERRY, GODBOLD and RUBIN, Circuit Judges.

BY THE COURT:

Litigation is pending in the District Court for the Southern District of Florida concerning title to a large number of historical artifacts recovered from a sunken Spanish galleon and in the possession of the State of Florida at Tallahassee, in the Northern District of Florida. Incident to this litigation the Southern District Court issued a warrant of arrest in rem directing the United States Marshal to seize the artifacts and

deliver them to substitute custodians appointed by the court pending final disposition of the litigation. The substitute custodians are the private parties plaintiff who in the pending case claim title to the artifacts.

The state of Florida has filed in this court a petition for emergency relief, a petition for supplemental relief, and a petition for a writ of prohibition seeking to retain possession of the artifacts and questioning the jurisdiction of the Southern District Court. On April 12 a single judge of this court granted a temporary emergency stay of the warrant of arrest. On April 14 the district judge of the Southern District who had authorized the warrant of arrest stayed the execution of the warrant.

The state of Florida asserts that

the artifacts should not be delivered to another custodian until they have been curated, cleaned, documented and photographed, otherwise their authenticity as historical artifacts will be destroyed or diminished. Additionally, the state asserts that unless the items are photographed before delivery to the claimants-custodians, it may not be able to defend against possible claims that, while in the state's possession, some of the artifacts have been lost, taken or destroyed.

In order that the Southern District Court can proceed expeditiously to dispose of the litigation before it and in the interest of preserving the integrity of the artifacts as historical items should it be determined that all or some of them are the property of the State of Florida, it is ORDERED:

The temporary stay of the warrant of arrest in rem is dissolved. The United States Marshal may execute the warrant of arrest and upon doing so shall forthwith deliver custody of all of the items in question to a custodian who will take possession of them in situ and shall place them under lock or seal at their present location and hold them secure. If the parties cannot agree upon a custodian, the District Court should appoint a custodian having no interest in the suit. In all other respects the petitions of the state of Florida are DENIED.

May 15, 1978

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

(Title omitted in printing)

ORDER DENYING PETITION FOR RECONSIDERATION AND FOR CLARIFICATION

Before THORNBERRY, GODBOLD and RUBIN, Circuit Judges.

BY THE COURT:

The State of Florida requests that we reconsider our order of May 15, 1978. The question of the jurisdiction of the District Court for the Southern District of Florida is for that court to determine in the first instance on the basis of such record as may be developed in that court. The petition for reconsideration and for clarification is DENIED.

June 1, 1978

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

(Title omitted in printing)

ORDER DIRECTING MARHSAL TO EXECUTE WARRANT FOR ARREST; APPOINTING SUBSTITUTE CUSTODIAN AND SETTING HEARINGS ON ALL PENDING MATTERS

On April 6, 1978, this Court issued its Warrant for Arrest in Rem commanding the United States Marshal to take into his possession the portions of the vessel and artifacts recovered therefrom which have been in the possession of the State of Florida, Department of State, or in its custody, care or control. On April 12, 1978, a single Judge of the United States Court of Appeals for the Fifth Circuit granted a temporary emergency stay of the warrant of arrest; and on April 14, 1978, this Court also stayed the execution of the warrant. Thereafter, on May 15, 1978, the Circuit Court

of Appeals dissolved the temporary stay of the warrant of arrest and allowed the United States Marshal to execute the warrant and to deliver custody of all of the items in question to a Custodian who will take possession of them in situ and shall place them under lock or seal at their present location and hold them secure. The Court of Appeals also ordered that if the parties could not agree on a Custodian, this Court should appoint a Custodian having no interest in the suit.

The plaintiffs have filed in this court a memorandum stating that because it is to the best interest of all parties that the litigation be disposed of as expeditiously as possible, they consent to the appointment of the State of Florida, Deparment of State, as Substitute Custodian for those portions of the subject

vessel which are subject to the warrant for arrest in rem.

The State of Florida has now filed its motion for hearing and oral argument on the question as to jurisdiction. It is therefore

ORDERED and ADJUDGED that the United States Marshal is hereby commanded to forthwith execute the warrant of arrest heretofore issued by this Court on April 6, 1978. Upon seizure, the United States Marshal is directed to prepare a detailed, itemized list of all property seized by him and to file a copy in these proceedings. The Substitute Custodian is ordered and directed to furnish to the United States Marshal copies of any documents it may have including any inventories, documentation and photographs pertaining to the said artifacts to

assist the United States Marshal in making his inventory.

The State of Florida, Department of State, presently has custody and control of the said artifacts, and by agreeing to accept appointment as Substitute Custodian will accept the responsibility of safekeeping the same until further order of this Court without the payment of any fees to the Substitute Custodian.

The State of Florida, Department of State, by affidavit appended hereto as "Exhibit A" and made a part hereof, avers that it has adequate facilities and supervision for the proper safeguarding of the said artifacts and that it has adequate substance to respond in damages for loss or injury to the said artifacts or for damage sustained by third parties due to any acts, faults or negligence by said

Substitute Custodian. Further, in said affidavit, the Substitute Custodian accepts, in accordance with the terms of this order, possession of said artifacts and shall place them under lock or seal at their present location and hold them secure pending further order of this Court.

The plaintiffs, TREASURE SALVORS, INC., a corporation, and Armada Research Corp., a corporation, in consideration of the Marshal's consent to the substitution of custody, agree to release the United States and the Marshal from any and all liability and responsibility arising out of care and custody of the said artifacts, and said plaintiff further agree to hold harmless and indemnify the United States and the Marshal from any and all claims whatsoever arising out of the

Substitute Custodian's possession and safekeeping. Therefore, it is

ORDERED that the United States Marshal be and he is hereby authorized and directed, upon his seizure of the said artifacts and obtaining a complete inventory thereof, to surrender the possession thereof to the Substitute Custodian named herein, and that upon such surrender the Marshal shall be discharged from his duties and responsibilities for the safekeeping of said artifacts and held harmless from any and all claims arising whatever out of said substituted possession and safekeeping. It is further

ORDERED that the State of Florida, Department of State, be and it is hereby appointed the Custodian of said artifacts, to retain the same in its custody,

for possession and safekeeping under lock or seal at their present location, and to hold them secure until further order of this Court. It is further

ORDERED that all Marshal's costs be paid prior to the release of the said artifacts. It is further

ORDERED that the Substitute Custodian must receipt for the said artifacts, and the Marshal must attest to the date and time of release on a certified copy thereof.

Pursuant to the direction of the Circuit Court of Appeals to proceed expeditiously to dispose of the litigation before it, and the State of Florida's motion for hearing and oral argument on the question of jurisdiction, it is

ORDERED that this matter be and it

is hereby set for an evidentiary hearing and argument before this Court at 9:30 A.M. on July 27, 1978, upon the question of the jurisdiction of this Court over the subject matter of this litigation. It is further

ORDERED that if this Court finds that it is without jurisdiction, it will enter an order dismissing the litigation; however, if this Court finds that it does have jurisdiction, it will then immediately hold an evidentiary final hearing on the merits of all issues otherwise involved herein.

DONE and ORDERED at Miami, Florida, this 30th day of June, 1978.

s/ W. Mehrtens
Senior United States
District Judge

("CC" to counsel omitted in printing)

[EXHIBIT A]

A F F I D A V I T

W. ROBERT WILLIAMS personally appeared before me, and being duly sworn, deposes and says:

I am the Deputy Secretary of the State of Florida and former Director of the Division of Archives, History and Records Management.

If the State of Florida is required to relinquish possession of the treasure trove and other historically valuable objects of antiquity which the State is presently substitute custodian in this proceeding, prior to a ruling by the Fifth Circuit Court of Appeals, the State of Florida will suffer irreparable damage. If the Fifth Circuit Court of Appeals rules in favor of the State and no stay of this Court's Final Order has

been granted, there is a high probability that the collection as a whole may well be broken up and individual pieces offered for sale; some or many pieces may even be sold. It would be difficult for the State to be certain it is getting back the exact same items and not look alike bona fide copies and even counterfeits. All of the items in question are catalogued and recorded as to their provenience from within the wreck site. The provenience data are important because they allow reconstruction of the plan of the wreck site and groups of items that were associated on board the original vessel before wreckage. Such associations reflect the kinds and quantities of items stored together on board and intended, in some cases, for complementary use.

This kind of information is extremely important to naval historians and others concerned with data relating to ocean commerce. If the State's collection is broken up, the State's cataloging system and catalog of individual objects will be discarded, and much of the provenience data recorded for individual pieces will be lost; objects would almost certainly not be sold with the State's catalog tags still attached. If the pieces are then returned to the State it will be impossible in many instances to re-associate items, especially numbers. The guarantee of State protection of these historically valuable items on behalf of Florida citizens may well be permanently lost.

The arrested property may or may not be those which would be priced highest in

a free market exchange. Rather, they are items which appear to possess the greatest historical and scientific value. This value is not directly convertible into monetary value, and certainly cannot be compensated for with money.

Many of the items require regular curatorial inspection and preservation laboratory care to insure that they do not deteriorate. Once out of the State's care and after sale to private owners, the physical care of the objects would not be adequate. The State's laboratory facilities where the property in question is presently located are the best in the State for providing the necessary care, and the objects merit the best possible physical protection.

It is in the public interest that the State of Florida be allowed to

continue as substitute custodian for the items in question until after a ruling by the Fifth Circuit Court of Appeals.

s/ W. Robert Williams
W. ROBERT WILLIAMS

(Notary's signature and seal omitted in printing)

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF FLORIDA

No. 75-1416-Civ-WM

TREASURE SALVORS, INC.,
a corporation and
ARMADA RESEARCH CORP.,
a corporation,

Plaintiffs,

vs.

THE UNIDENTIFIED WRECKED
AND ABANDONED SAILING
VESSEL, her tackle,
armament, apparel and
cargo located within 2500
yards of a point at coor-
dinates 24°31.5' north
latitude and 82°50' west
longitude, said sailing
vessel is believed to be
the NUESTRA SENORA DE ATOCHA,

Defendant.

O R D E R

MEMORANDUM INCLUDING FINDINGS OF FACT AND
CONCLUSIONS OF LAW

(Pursuant to U.S. Supreme Court Rule
30.1, the Court is respectfully directed
to the Appendix to the Petition for Writ
of Certiorari, at A61-163.)

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

No. 75-1416-Civ-WM

TREASURE SALVORS, INC.,
a corporation and
ARMADA RESEARCH CORP.,
a corporation,

Plaintiffs,

vs.

THE UNIDENTIFIED WRECKED AND ABANDONED SAILING VESSESL, her tackle, armament, apparel and cargo located within 2500 yards of a point at coordinates 24°31.5' north latitude and 82°50' west longitude, said sailing vessel is believed to be the NUESTRA SENORA de ATOCHA,

Defendant.

O R D E R

FINAL JUDGMENT

The Court having determined that the present proceedings are not barred by the Eleventh Amendment and that it has jurisdiction over the articles of salvage arrested pursuant to the warrant issued

on April 6, 1978, therefore it is

ORDERED and ADJUDGED and DECREED that the Division of Archives, History and Records Management, Department of State, State of Florida, take nothing for its claim and that its claim is denied in all respects and that all costs be taxed against the Division of Archives, Department of State, State of Florida, it is further

ORDERED and ADJUDGED and DECREED that Treasure Salvors, Inc. and Armada Research Corp. have full right and title to articles arrested and that they are entitled to possession and that the United States Marshal, who has possession and control of such articles, shall deliver them to Treasure Salvors, Inc. and Armada Research Corp.

The Court retains jurisdiction to issue the necessary orders to enforce this decree.

DONE and ORDERED at Miami, Florida, this 21st day of August, 1978.

s/ W. Mehrtens
Senior United States
District Judge

("CC" to counsel omitted in printing)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

(Title omitted in printing)

DEFENDANT STATE OF FLORIDA'S MOTION TO STRIKE

Please take notice that the Defendant State of Florida, pursuant to Rule 12(f), Federal Rules of Civil Procedure, moves to strike from Plaintiff's Memorandum on Jurisdiction, Plaintiff's defense of res judicata on the grounds that this defense was not affirmatively pleaded in Plaintiff's Supplemental Complaint for Declaratory Injunctive and Other Relief as required by Rule 8(c), Federal Rules of Civil Procedure, and thus is not properly before the Court.

Defendant further moves to strike from Plaintiff's Memorandum on Jurisdiction the paragraphs listed below on the grounds that statements contained therein

are not supported by the record; they are calculated to harm and prejudice Defendant's position; and are further impertinent and immaterial. Thus, they are not properly before the Court.

1. Page 3, lines 17 and 18 -- the reference to and involvement by the Division of Archives with the United States.

2. Page 3, line 29 -- the reference to the Division of Archives "cooperation" in the litigation of the suit.

3. Page 4, lines 2, 3, and 4 -- the reference to the Division of Archives coercing the acceptance of a salvage conctract under which it gave nothing.

4. Page 4, lines 16, 17 and 18 -- the reference to the Division of Archives knowledge regarding the validity of the contract claim.

5. Page 4, lines 24-37 -- the reference to the Division of Archives "encouragement" to the United States, the Division of Archives plan and in general the alleged conduct of the Division of Archives, which is totally unsupported by the record.

6. Page 5, lines 27-34 -- the reference to the Division of Archives knowledge regarding its rights being in jeopardy in cooperation with the federal government, and negotiations with the federal government.

7. Page 6, lines 4-11 -- the reference to an attorney for the Florida Secretary of State's work with the federal government on this case and the Division of Archives negotiations with the federal government.

8. Page 7, lines 24-28 -- the

reference to the Division of Archives cooperation with the federal government and relying on it to protect the Division's interest.

9. Page 9, lines 4-8 -- the reference to the Division of Archives negotiation with the federal government.

10. Page 9, lines 39-41 -- the reference to the Division of Archives consultation with the federal government.

11. Page 10, lines 1-6 -- the reference to the Division of Archives reliance upon the United States to protect the Division's interests.

12. Page 13, lines 37-41 -- the reference to the Division of Archives advising the federal government in its prosecution of the case.

13. Page 14, lines 35-41 -- the reference to the Division of Archives

attorneys working with the federal government.

14. Page 26, lines 31-37 -- the reference to Chapter 267 being in conflict with substantive maritime law.

15. Pages 27 and 28 -- all of these two pages in their entirety. No argument was made during the hearing regarding the constitutionality of Chapter 267, Florida Statutes, or any other conflict of Chapter 267 with federal substantive law.

16. Page 30, lines 26-30 -- the reference to the Division of Archives power to sue and be sued. Testimony on this point is a conclusion of law and is thus improper and immaterial.

17. Page 30, lines 36-42 -- the reference to the Legislature's waiver of immunity authorizing suits to quiet title. This is a new matter argued by

Plaintiff after the hearing and is further impertinent to the subject matter of this litigation.

18. Page 32, lines 32-36 -- reference to the State of Florida's misrepresentations.

For these reasons and those in the accompanying Memorandum of Law, Defendant requests that the Court enter an Order granting Defendant's Motion to Strike.

Respectfully submitted,

ROBERT L. SHEVIN
Attorney General

s/ Bernard S. McLendon
BERNARD S. McLENDON
Assistant Attorney General

Department of Legal Affairs
Civil Division
The Capitol
Tallahassee, Florida 32304
904/488-1573

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT STATE OF FLORIDA'S MOTION TO STRIKE

At the conclusion of the evidentiary hearing before the Court in this matter, held on July 27 and 28, 1978, this Court advised counsel for the respective parties that they would have a certain time in which to file a memorandum of law in support of their arguments during the hearings. Counsel for the State of Florida concluded that this meant a memorandum could be filed citing cases in support of the parties' arguments and evidence presented during the hearings.

It appears that Treasure Salvors is determined to assert their theory of what this case is about, even though the evidence has been received by this Court and little or no evidence was presented during the hearing to support their theory.

Their Memorandum on Jurisdiction, etc., is replete with theories, misstatements and legal arguments have been made after the hearing for the first time.

Because Plaintiff has chosen to use these tactics, Defendant has moved to strike arguments made by Plaintiff that have been waived, raised for the first time, or are immaterial, impertinent and calculated to be prejudicial to Defendant. Under Rule 12(f), this Court upon its own initiative at any time may order striken from any pleading any immaterial or impertinent matter.

In its Memorandum on Jurisdiction, etc., Plaintiff has raised the defense of res judicata which under Rule 8(c), Federal Rules of Civil Procedure, is an affirmative defense and therefore must be affirmatively pleaded. However, nowhere

on the face of Plaintiff's Supplemental Complaint for Declaratory, Injunctive and Other Relief is there an allegation of res judicata. If an affirmative defense is not pleaded, it is waived to the extent that the party who should have pleaded the affirmative defense may not introduce evidence in support thereof. 2A Moore's Federal Practice, p. 1853 and cites therein. See also 5 Wright and Miller, Federal Practice and Procedure, p. 341. In spite of Plaintiff's theory regarding "privity" between the United States and Florida, the testimony of Plaintiff's witnesses did not conclusively establish that Florida and the United States had such a close relationship that Florida should be deemed in privity with the United States and thus bound by the Fifth Circuit's earlier rul-

ing in this case. Assuming arguendo that such a relationship did exist, Plaintiff waived the defense of res judicata because they failed to affirmatively plead same in their Supplemental Complaint for Declaratory, Injunctive and Other Relief. As the Court held in Crown v. Cherokee Wonderland, Inc., 379 F.2d at p. 54 (4th Cir. 1967):

> Res judicata is an affirmative defense which must, pursuant to Rule 8(c) of the Federal Rules of Civil Procedure, be pleaded affirmatively in order to apprise the opposing party that such a defense will be interposed at trial.

See also, Badway v. United States, 367 F.2d 22 (1st Cir. 1966). Since the testimony presented by Plaintiff did not establish that there was a close relationship between the United States and Florida and therefore privity existed,

there is no basis to allow an amendment under Rule 15(b), Federal Rules of Civil Procedure, to conform to the evidence.

The Memorandum on Jurisdiction, etc., filed by Treasure Salvors pursuant to this Court's Order on the close of the hearings in this case is replete with misstatements of fact and certainly is not based upon the evidence in this case. In contrast, Defendant State of Florida's Memorandum is confined to the conclusive evidence Defendant presented during the hearings, the legal arguments in support of this evidence and cases in support of the legal arguments raised by Defendant. For a party to reargue in a memorandum to the court their theory about the case after the hearing, and the record does not contain evidence to support the party's theory, is indeed impertinent and

immaterial. Plaintiff's Memorandum should have been addressed to the facts they were able to establish during the hearings, the law in support thereof, and legal argument made at that time. For a party to argue their theory of the case instead, one can logically conclude that the party established nothing factually that it can bring to the Court's attention.

Therefore, Defendant requests that the Court enter an Order granting it's Motion to Strike.

Respectfully submitted,

ROBERT L. SHEVIN
Attorney General

s/ Bernard S. McLendon
BERNARD S. McLENDON
Assistant Attorney General
Department of Legal Affairs
Civil Division
The Capitol
Tallahassee, Florida 32304
904/488-1573

(Certificate of Service omitted in printing)

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 78-2950

IN RE: STATE OF FLORIDA
DEPARTMENT OF STATE,

Petitioner/Appellant,

VERSUS

TREASURE SALVORS, INC., etc.,

Plaintiffs/Appellees,

THE UNIDENTIFIED, WRECKED AND
ABANDONED SAILING VESSEL, ETC.,

Defendant.

Appeal from the United States
District Court for the Southern
District of Florida

(Pursuant to U.S. Supreme Court Rule 30.1, the Court is respectfully directed to the Appendix to the Petition for Writ of Certiorari, at A6-60.)

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 78-2950

D. C. Docket No. 75-1416-Civ-WM

IN RE: STATE OF FLORIDA, DEPARTMENT OF STATE,
Petitioner-Appellant,
versus
TREASURE SALVORS, INC., a Corporation, and ARMADA RESEARCH CORP., a Corporation,
Plaintiffs-Appellees,
THE UNIDENTIFIED, WRECKED and ABANDONED SAILING VESSEL, Etc.,
Defendant.

Appeal from the United States District Court for the Southern District of of Florida

Before GEWIN, RUBIN and SAM D. JOHNSON, Circuit Judges.

J U D G M E N T

(Pursuant to U.S. Supreme Court Rule 30.1, the Court is respectfully directed to the Appendix to the Petition for Writ of Certiorari, at A4-5.)